

IN THE CIRCUIT COURT OF
CAMDEN COUNTY, MISSOURI

STATE of MISSOURI ex rel.)
JEREMIAH W. ("JAY") NIXON,)
Attorney General, and the)
MISSOURI DEPARTMENT OF)
NATURAL RESOURCES)

Plaintiff,)

v.)

Case No. _____

BROTAASS, L.L.C., TYKE)
ENTERTAINMENT, INC., and)
JOHN TEICHMAN, individually,)

Please Serve: John Teichman
1522 Nichols Road
Osage Beach, MO 65065

PETITION FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

COMES NOW, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, the Attorney General, Daniel L. Massey, Assistant Attorney General, and the Missouri Department of Natural Resources, and for its petition against Defendant Brotaass, L.L.C., Defendant Tyke Entertainment, Inc., and Defendant John Teichman (collectively, "Defendants") states the following for its cause of action:

Allegations Pertaining to All Counts

1. Jeremiah W. ("Jay") Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri.

2. The Missouri Department of Natural Resources (the "Department") is a state agency created under Section 640.010, RSMo., and is authorized to administer the provisions of

the Missouri Underground and Petroleum Storage Tank Law, Sections 319.100 through 319.137, RSMo and its implementing regulations (collectively, the “Missouri UST Law”).

3. The Department is also authorized to administer the provisions of the Missouri Air Conservation Law, sections 643.010 to 643.620, RSMo, and its implementing regulations (collectively, the “Air Conservation Law”) and the Missouri Safe Drinking Water Law, sections 640.100 to 640.140, RSMo, and its implementing regulations (collectively, the “SDW Law”).

4. Shooters 21 Restaurant and Marina is located in Section 4, Township 39 North, Range 16 West at 1522 Nichols Road in Osage Beach, Camden County, Missouri (hereinafter, “Shooters” or “facility”).

5. Venue is proper herein pursuant to section 319.127, RSMo of the Missouri UST Law, section 643.151, RSMo of the Air Conservation Law, and section 640.131 of the SDW Law in that the violations alleged herein occurred in Camden County, Missouri.

6. Shooters, the USTs at the Shooters facility, and the drinking water system at the facility are currently owned and operated by Tyke Entertainment, Inc. and/or Brotaass, L.L.C. and/or John Teichman in his personal capacity.

7. Tyke Entertainment, Inc. is a Missouri corporation that was dissolved in approximately 2002. Tyke Entertainment, Inc.’s registered agent is John Teichman.

8. Brotaass, L.L.C. is an active domestic limited liability company. Brotaass, L.L.C.’s registered agent is John Teichman and its organizer is John Teichman.

9. John Teichman is a Missouri resident.

Count I: Violations of the Missouri Underground and Petroleum Storage Tank Law

10. Missouri State Regulations 10 CSR 20-10.021 (for existing USTs) and 10 CSR 20-10.020 (for new USTs) (collectively, “the ‘98 upgrades”) require owners and operators of USTs in Missouri to have completed certain mechanical upgrades to their USTs to improve spill, overfill, and corrosion protection no later than December 22, 1998.

11. Shooters has two steel cathodically protected operating 8,000 gallon USTs that hold petroleum for sale to the public. The UST-system at Shooters provides boat re-fueling for boaters on Lake of the Ozarks.

12. The USTs at the Shooters facility are owned by Tyke Entertainment, Inc. and/or Brotaass, L.L.C., and or John Teichman in his personal capacity, as that term is defined at section 319.100(9), RSMo and used in the Missouri UST Law.

13. The USTs at the Shooters facility are operated by John Teichman and/or Tyke Entertainment, Inc., and/or Brotaass, L.L.C., as that term is defined at section 319.100(8), RSMo and used in the Missouri UST Law in that the above-named Defendants are responsible for day-to-day compliance with the Missouri UST Law and exercise decision making authority with respect to the USTs at the facility.

14. On or about April 23, 2001, the Department conducted an inspection of the USTs at Shooters. The Department’s April 23, 2001 inspection revealed the following violations of the Missouri UST Law:

- a. Failure to submit requested records, in violation of 10 CSR 20-10.034(1)(C)2;
- b. Failure to register a UST system with the Department, in violation of 10 CSR 20-10.022;

- c. Failure to provide a method of financial responsibility to protect against releases resulting in harm to human health, the environment, or property damage, in violation of 10 CSR 20-11.091 through 10 CSR 20-11.095;
- d. Failure to conduct tank and piping release detection, as the automatic tank gauging (ATG) machine was turned off at the time of the inspection, no piping release detection had been conducted, and the UST system did not have automatic line leak detectors, in violation of 10 CSR 20-10.040;
- e. Failure to maintain records on tank and piping release detection, in violation of 10 CSR 20-10.045;
- f. Failure to submit documentation to the Department that Shooters was in compliance with the '98 Upgrade Requirements, in violation of 10 CSR 20-10.021;
- g. Failure to label and secure monitoring wells, in violation of 10 CSR 20-10.043(1)(F)8; and
- h. Failure to maintain proper operation and maintenance of a corrosion protection system, as the corrosion system was turned off at the time of inspection, adequate records of the corrosion protection system were not maintained, and the cathodic protection system was not tested as required, in violation of 10 CSR 20-10.031.

15. As a result of the violations observed during the Department's April 23, 2001 inspection, the Department issued Notice of Violation (NOV) #1803 JC to Shooters on or about June 14, 2001. A true and correct copy of NOV #1803 JC is attached hereto as "Exhibit 1" and incorporated herein by reference.

16. Defendants took no action to bring Shooters into compliance with the Missouri UST Law following issuance of NOV #1803 JC.

17. On or about September 12, 2001, the Department sent a letter to Shooters outlining the ongoing violations of the Missouri UST Law at the facility. A true and correct copy of the Department's September 12, 2001 letter is attached hereto as "Exhibit 2" and incorporated herein by reference.

18. Defendants took no action to bring Shooters into compliance with the Missouri UST Law following the Department's September 12, 2001 letter.

19. On or about April 24, 2002, the Department sent another letter to Shooters that once again outlined the ongoing violations of the Missouri UST Law at the facility. A true and correct copy of the Department's April 24, 2002 letter is attached hereto as "Exhibit 3" and incorporated herein by reference.

20. Defendants took no action to bring Shooters into compliance with the Missouri UST Law following the Department's April 24, 2002 letter.

21. On or about June 10, 2002, the Department conducted another inspection of Shooters. The Department's inspection revealed continuing violations of the Missouri UST Law. The violations noted by the Department were as follows:

- a. Failure to register a UST system with the Department, in violation of 10 CSR 20-10.022;
- b. Failure to provide a method of financial responsibility to protect against releases resulting in harm to human health, the environment, or property damage, in violation of 10 CSR 20-11.091 through 10 CSR 20-11.095;

- c. Failure to conduct tank and piping release detection, as the ATG machine was turned off at the time of the inspection and no piping release detection had been conducted and the UST system did not have automatic line leak detectors, in violation of 10 CSR 20-10.040;
- d. Failure to maintain records on tank and piping release detection, in violation of 10 CSR 20-10.045;
- e. Failure to submit documentation to the Department showing that Shooters was in compliance with the '98 Upgrade Requirements, in violation of 10 CSR 20-10.021;
- f. Failure to maintain proper operation and maintenance of a corrosion protection system, as the corrosion system was turned off at the time of inspection, adequate records of the corrosion protection system were not maintained, and the cathodic protection system was not tested as required, in violation of 10 CSR 20-10.031; and
- g. Failure to follow temporary closure procedures, in that release detection was not being performed on either of the two tanks at Shooters and petroleum remained in both tanks, in violation of 10 CSR 20-10.070.

22. As a result of the violations observed during the Department's June 10, 2002 inspection, the Department issued NOV #2057 JC to Shooters on or about June 17, 2002. A true and correct copy of NOV #2057 JC is attached hereto as "Exhibit 4" and incorporated herein by reference.

23. On or about July 16, 2002 John Teichman properly registered the USTs at the Shooters facility with the Department. The registration reported two USTs at the facility and

listed John Teichman as the owner of those USTs. A facility identification number of ST3007371 was assigned. A true and correct copy of the Department's July 19, 2002 letter to John Teichman confirming registration of the UST is attached hereto as "Exhibit 5" and incorporated herein by reference.

24. On or about October 11, 2002, the Department sent John Teichman a "Return to Compliance" letter for the Shooters facility. The Department's letter stated that the Shooters facility had returned to compliance with the Missouri UST Law and that for the facility to remain in compliance while being in temporary closure, the USTs would have to remain empty and out of service, that only up to one inch of product could remain in the USTs, cathodic protection three-year tests would have to be kept current, and 60-day rectifier tests would have to be maintained for one year.

25. On or about May 24, 2004, the Department conducted another inspection of Shooters. The Department's inspection revealed the USTs at the Shooters facility were unlawfully filled with petroleum and in operation. The following violations of the Missouri UST Law were noted by the Department during their May 24, 2004 inspection:

- a. Failure to cooperate fully with requests for document submission as a result of an inspection by the Department, in violation of 10 CSR 20-10.034(1);
- b. Failure to provide adequate corrosion protection methods for UST piping, in violation of 10 CSR 20-10.020(1)(B)3.E.;
- c. Failure to conduct an annual test of operation of automatic line leak detectors, in violation of 10 CSR 20-10.044(1)(A);

- d. Failure to conduct an annual line tightness test on pressurized piping, in violation of 10 CSR 20-10.044(1)(B);
- e. Failure to monitor tanks and piping at least every 30 days, in violation of 10 CSR 20-10.041(1)(A);
- f. Failure to provide a method of financial responsibility to protect against releases resulting in harm to human health, the environment, or property damage, in violation of 10 CSR 20-11.093; and
- g. Failure to file an updated registration form to advise of changes in tank equipment and operation information as current registration listed the USTs at the facility as being in temporary closure but the tanks were operating and contained three and five inches of product, respectively, in violation of 10 CSR 20-10.022(5).

26. Section 319.127, RSMo specifically authorizes this Court to impose a penalty of up to \$10,000.00 for each day or part thereof a violation of the Missouri UST Law occurs or continues to occur.

27. To date, Defendant have not corrected their violations of the Missouri UST Law observed during the Department's May 24, 2004 inspection and their violations of the Missouri UST Law are ongoing.

28. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court enter its Order and Judgment against Defendants as follows:

- (1) Find that Defendants repeatedly violated the Missouri UST Law;

- (2) Order Defendants to pay a civil monetary penalty of up to \$10,000 for each of their violations of the Missouri UST Law, multiplied by the number of days or partial days said violations occurred or continue to occur;
- (3) Issue a preliminary and permanent injunction ordering Defendants to either:
 - (a) Permanently close the USTs at Shooters; or
 - (b) Begin performing proper testing, submit requested documents to the Department of Natural Resources, begin providing adequate corrosion protection for UST piping, obtain the necessary insurance, and re-register the USTs with the Department as being currently in use;
- (4) Order Defendants to immediately, and at all future times promptly supply all relevant records and tests requested by the Department and fully and diligently cooperate with the Department in its regulation of the Missouri UST Law;
- (5) Order Defendants to immediately come into compliance with the Missouri UST Law;
- (6) Order Defendants to pay Plaintiff's costs and fees associated with this action; and
- (7) Grant such other relief as is just and proper under the circumstances.

Count II: Violations of the Missouri Air Conservation Law

29. Plaintiff re-states and incorporates by reference paragraphs 1 through 28 as though fully set forth herein.

30. On or about June 10, 2002, Department staff observed evidence of open burning of business and trade waste involving burned and smoldering cardboard, plywood, foam rubber, and plumbing fixtures at Shooters, in violation of 10 CSR 10-3.030. As a result, the Department

issued NOV # 0880 JC on or about June 11, 2002. A true and correct copy of NOV #0880 is attached hereto as “Exhibit 6” and incorporated herein by reference.

31. Section 643.151, RSMo specifically authorizes this Court to impose a penalty of up to \$10,000 for each day or partial day thereof a violation of the Air Conservation Law occurs or continues to occur.

WHEREFORE, Plaintiff prays this Court enter its Order and Judgment against Defendants as follows:

- (1) Find that Defendants violated the Missouri Air Conservation Law;
- (2) Order Defendants to pay a civil monetary penalty of up to \$10,000 for each of their violations of the Missouri Air Conservation Law, multiplied by the number of days or partial days said violations occurred or continue to occur;
- (3) Order Defendants to refrain from all unlawful open burning of trade waste and/or demolition waste;
- (4) Order Defendants to properly dispose of any remaining trade waste and/or demolition waste and burn residue at the site, and submit receipts for disposal of said demolition waste and/or burn residue to the Department of Natural Resources;
- (5) Order Defendants to immediately, and at all future times promptly supply all relevant records and tests requested by the Department and fully and diligently cooperate with the Department in its regulation of the Missouri Air Conservation Law,
- (6) Order Defendants to pay Plaintiff’s costs and fees associated with this action; and

- (7) Grant such other relief as is just and proper under the circumstances.

Count III: Violations of the Missouri Safe Drinking Water Law

32. Plaintiff re-states and incorporates by reference paragraphs 1 through 31 as though fully set forth herein.

33. Defendants own and operate a public water system at Shooters, as defined in section 640.102(6), RSMo, in Osage Beach, Camden County, Missouri.

34. Shooters serves piped water for human consumption from one drilled well located at the facility to twenty-five or more persons at least sixty days out of the year. In light of this, Shooters is a Transient, Non-Community Public Water System pursuant to 10 CSR 60-2.015(2)(T).

35. Public Water Systems (PWSs) are required to comply with the provisions of the SDW Law.

36. Shooters failed to submit bacteriological analysis to the Department for the months of April 2000, May 2000, June 2000, July 2000, August 2000, and September 2000.

37. On or about April 6, 2001 Shooters and the Department issued into a Bilateral Compliance Agreement (BCA) whereby Shooters agreed to a compliance schedule. A true and correct copy of the BCA entered into between Shooters and the Department is attached hereto as “Exhibit 7” and incorporated herein by reference.

38. Shooters failed to comply with the compliance schedule thereby violating the terms of the BCA entered into with the Department.

39. On or about June 3, 2002, a representative of the Department conducted an inspection of the water system serving Shooters. The Department’s inspection revealed that:

- a. The facility had failed to submit monthly drinking water samples for bacteriological analysis, in violation of 10 CSR 60-4.020; and
- b. The facility had operated a public drinking water supply without a permit of approval, in violation of 10 CSR 60-3.010.

40. As a result of the violations observed during the Department's June 3, 2002 inspection, NOV #2058 JC was issued to Shooters on June 13, 2002. A true and correct copy of NOV #2058 JC is attached hereto as "Exhibit 8" and incorporated herein by reference.

41. Shooters failed to submit samples for bacteriological analysis to the Department for the months of May 2001, June 2001, August 2001, September 2001, April 2002, May 2002, August 2002, September 2002, October 2002, and October 2003, in violation of 40 CFR 141.21(a) and 10 CSR 60-4.020(1). As a result, the Department issued NOV #10198 SW to Shooters on or about March 29, 2004. A true and correct copy of NOV #10198 SW is attached hereto as "Exhibit 9" and incorporated herein by reference.

42. Section 640.130.1, RSMo authorizes the State to bring an action to enforce the provisions of the SDW Law.

43. Section 640.131.6, RSMo provides that for violations of the SDW Law, the "state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court."

44. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court enter its Order and Judgment against Defendants as follows:

- (1) Find that Defendants repeatedly violated the Missouri Safe Drinking Water Law;
- (2) Order Defendants to pay a civil monetary penalty of up to \$50 for their first violation of the Missouri Safe Drinking Water Law and up to \$100 for each violation of the Missouri Safe Drinking Water Law committed thereafter;
- (3) Order Defendants to immediately, and at all future times promptly supply all relevant records and tests requested by the Department and fully and diligently cooperate with the Department in its regulation of the Safe Drinking Water Law;
- (4) Order Defendants to immediately come into compliance with the Safe Drinking Water Law;
- (5) Order Defendants to pay Plaintiff's costs and fees associated with this action; and
- (6) Grant such other relief as is just and proper under the circumstances.

Respectfully Submitted,

JEREMIAH W. (JAY) NIXON
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